IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 7TH DECEMBER 2006 / 16TH AGRAHAYANA 1928

CRP.No. 551 of 2006()

AGAINST THE ORDER IN EP.437/2004 IN
OS.466/2003 of II ADDL.M.C.,NEYYATTINKARA

.....

REVN. PETITIONER: PETITIONER/JUDGEMENT DEBTOR

JAYAPRAKASH, S/O.NALLATHAMPI,
MANAVILA VEEDU, AMBALIKONAM DESOM,
PARASSUVAIKKAL VILLAGE, NEYYATTINKARA TALUK.

BY ADV. SRI.G.SUDHEER

RESPONDENTS: DECREE HOLDER

SASIDHARAN NAIR,
S/O.THANKAPPAN PILLAI,
SASTHANILAYAM, PARASSUVAIKKAL DESOM,
PARASSUVAIKKAL VILLAGE, NEYYATTINKARA TALUK.

BY ADV. SRI.GOPAKUMAR R.THALIYAL

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 07/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Order on I.A.No.2079/06 in C.R.P.No.551/06

7.12.06 Dismissed Sd/- M.Sasidharan Nambiar

JudgeMENT

/true copy/

M.Sasidharan Nambiar,J.

C.R.P.No.551 of 2006

Dated this the 7th day of December,2006

O.R.D.E.R

Petitioner is the judgment debtor. Respondent is the decree holder. Petitioner is challenging the order of arrest passed by the executing court in E.P.437/04. The executing court on the evidence found that petitioner is having sufficient means. Though petitioner was examined as DW1, it was found that petitioner is constructing a house in the property of his wife and the wife is not having any income and petitioner is a pensioner, and he did not adduuce evidence to discredit the case of decree holder that petitioner is getting a monthly pension of Rs.7000/-. The contention of the petitioner is that eventhough petitioner specifically contended that he is suffering from various ailments, executing court ordered his arrest and it is to be quashed.

2. Learned counsel appearing for the

petitioner and respondent were heard.

3. Learned counsel appearing for petitioner pointed out that under section 59 of the Code of Civil Procedure, at any time after a warrant for the arrest has been issued, if judgment debtor could satisfy the executing court that on the ground of serious illness he cannot be detained in prison the order of arrest shall be cancelled. It is submitted that reserving his right to seek remedy as provided under section 59, the petition may be closed. In the light of the evidence, I do not find any infirmity in the order of arrest passed by the executing court. Therefore the revision is dismissed making it clear that if the judgment debtor is at liberty to establish that he is suffering from serious illness as provided under section 59 of the Code of Civil Procedure executing court shall consider the same and if he is not in a fit state of health to be detained in prison, he shall be released and the order of

arrest shall be cancelled as provided under section 59 of the Code.

M.Sasidharan Nambiar
Judge

tpl/-

M.SASIDHARAN NAMBIAR, J.

CRL.R.P.NO. /97

ORDER

MARCH,2006